

OPD and Rutgers's Law Schools win MacArthur Grant to address needs of juveniles

The John D. and Catherine T. MacArthur Foundation has awarded the Office of the Public Defender and Rutgers Camden and Newark Law Schools a \$100,000 grant to better address the needs of indigent juveniles in the criminal justice system.

New Jersey was one of four states selected this year to participate in the MacArthur Foundation's nationwide Models for Change Juvenile Defense Indigent Action Network, whose goal is to help accelerate the pace of change regarding the development and implementation of strategies designed to strengthen and enhance juvenile indigent defense systems.

Along with four existing Models for Change states – Illinois, Louisiana, Pennsylvania, Washington – the four newly partnering states receiving MacArthur Foundation grants this year – California, Florida, Massachusetts and New Jersey – will form a new Juvenile Defense Indigent Action Network. Representatives of the eight states are scheduled to hold the Network's inaugural meeting in Washington, DC, in early October.

Co-directors of the New Jersey project are:

- Cynthia Samuels, Assistant Public Defender who supervises Juvenile Defense Services and the Office of Law Guardian;
- Sandra Simkins, Clinical Associate Professor of Law at Rutgers Law School-Camden and co-director of the Children's Justice Clinic, and
- Laura Cohen, Clinical Professor of Law Rutgers Law School-Newark and co-director, Eric R. Neisser Public Interest Program.

To carry out New Jersey's grant, the three New Jersey partners will create the New Jersey Juvenile Justice Action Network. Ms. Samuels and Professors Simkins and Cohen, who form the Core Team, will work with Project Partners, which are stakeholder organizations whose involvement is essential to implementation of the Network's goals.

These stakeholders include:

- New Jersey Protection and Advocacy (N.J.P.&A.), which plays a statewide leadership role in advocating for people with disabilities, including children entitled to special education services;
- The Office of Child Advocate ("OCA"), an independent state agency with monitoring and oversight responsibility for all child-serving institutions in the state; and
- The Juvenile Justice Commission ("JJC"), the agency responsible for the care and custody of committed youth, are being invited to participate at this level.

Other senior stakeholders include the Office of Attorney General (which prosecutes delinquency cases and oversees all law enforcement activities in the state), the Administrative Office of the Courts (the administrative arm of the court system), the Office of Law Guardian (which represents children in dependency hearings), the Association for Children of New Jersey, and the New Jersey Institute for Social Justice

(both prominent, independent, statewide advocacy organizations with a commitment to and history of juvenile justice reform advocacy), and the Rutgers-Newark Child Advocacy and Special Education Clinics (which represent children and their families in dependency and special education proceedings, respectively).

New Jersey's winning grant application identified three areas where the New Jersey Juvenile Justice Action Network will focus their efforts to develop innovative solutions and strategies. "While New Jersey is a leader in providing quality juvenile defense representation through its statewide OPD, there are gaps in the delivery of representation and systemic concerns regarding delinquency court proceedings," the grant application said.

For example, before the OPD may assign counsel, a parent or guardian is required to complete an application for legal services, according to the application. The court determines eligibility based upon indigence and refers approved cases to the OPD for the assignment of counsel. As a result, public defender attorneys are not assigned until completion of this administrative process. Generally, this process is not completed prior to the initial detention hearing held within 24 hours of placement in custody. Therefore, in most cases, indigent children appear at initial detention hearings without counsel and Public Defender attorneys generally do not appear until the probable cause/second detention hearing held within two court days after the initial detention hearing.

Following the disposition of the delinquency case, the OPD continues representation only in appellate proceedings where counsel is required, the grant application said. Accordingly, OPD trial level representation normally ends following disposition. Since New Jersey courts do not routinely review cases after disposition, there is no mechanism in place for the OPD to monitor the extent to which court dispositional orders are implemented and enforced.

Additionally, a significant number of OPD clients are classified students in need of special education services, the application said. In some cases, delinquency complaints allege conduct that is closely related to and is consistent with a client's disability. However, representation in administrative educational proceedings is beyond the scope of the OPD's statutory authority and expertise. Access to legal services by special education attorneys has been identified as a service that would benefit juvenile defenders in preparing cases and juvenile clients in ensuring that they receive appropriate educational services.

The MacArthur Foundation award will enable New Jersey to explore models to address three entry points for reform: In New Jersey, public defender representation is not provided uniformly (1) at the initial detention hearing to determine whether a child remains in custody or returns home; and (2) at the post-dispositional stage where plans for the child's rehabilitative services are implemented, monitored and enforced. The third entry point is special education advocacy. Despite the fact that 57% of the children in Juvenile Justice Commission facilities are eligible for special education services, there

is no mechanism in place for educational advocacy concomitant with the juvenile court process.